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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.A., et al., Persons Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

G057364

(Super. Ct. Nos. DP021516-002,
17DP0623)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis J.
Keough, Judge. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant
and Appellant.

Leon J. Page, County Counsel, and Aurelio Torre, Deputy County Counsel,
for Plaintiff and Respondent.

No appearance for the Minors.

A.C. (Mother) appeals from the trial court's order terminating her parental rights over minors D.A. and H.S. (collectively referred to as the children). She claims the court abused its discretion because it denied her Welfare and Institutions Code¹ section 388 modification petition after considering the issue at the section 366.26 termination hearing (.26 hearing). We find no error and affirm the order.

FACTS

I. Removal and Detention

The Orange County Social Services Agency (SSA) took seven-year-old D.A. and one-year-old H.S. into protective custody on June 10, 2017. The day before, an unknown assailant shot Mother in the abdomen while the children were present. D.A. told a social worker she saw Mother's male friend kick, punch, and yell at Mother, making her feel unsafe. D.A. also stated Mother would sometimes leave her and H.S. with the man.

The section 300 petition alleged Mother and the fathers² were not available to care for the children; exposed the children to domestic violence; Mother had an unresolved issue with substance abuse; D.A.'s alleged father has a criminal history; D.A. was formerly a dependent of the Orange County Juvenile Court; the whereabouts of D.A.'s father were unknown; and H.S.'s biological father was currently incarcerated and unable to support or care for her. At the detention hearing on June 14, 2017, the court ordered the children detained.

II. Jurisdiction and Disposition

On June 21, 2017, SSA confidentially placed the children with non-related, extended family members (caregivers). SSA's jurisdiction/disposition report noted

¹ All further statutory references are to the Welfare and Institutions Code.

² None of the fathers received reunification services and none appeal, they are referenced only to provide factual context.

Mother continued to be uncooperative with police regarding her shooting, and characterized Mother and her family members as “consistently evasive and not [] forthcoming on several occasions as to the whereabouts of the children prior to them being placed in protective custody.” The report further noted Mother’s history of domestic violence, substantive abuse, and criminal activity. It also stated it was the family’s ninth contact with SSA and described Mother’s past failure to follow through with necessary services for the children’s learning disabilities. SSA referred Mother to individual counseling, a parent education program, and drug testing.

Mother stated the children were both autistic and receiving services. She denied domestic violence and using drugs other than marijuana. Mother stated she was diagnosed with intermittent explosive disorder, attention deficit hyperactivity disorder, and post-traumatic stress disorder. She stopped taking prescribed psychotropic medications after being shot due to her blood loss. Mother gave birth to a child in June 2016, but she gave up custody of that child.

As for the children, in June 2017, D.A. reported “feeling good” but was worried about and missed Mother. In June 2017, the juvenile court authorized Mother a minimum of six hours a week monitored visits with the children. The children’s caregiver reported Mother engaged with the children and brought them a snack. The caregiver said Mother told D.A. the children would still be with Mother if D.A. had not said anything.

In August 2017, SSA had difficulty getting in touch with Mother. By the end of that month, the assigned social worker asked to be reassigned due to Mother’s threats to the worker. The case was reassigned to a different social worker in September 2017. After the case was reassigned, Mother contacted SSA and apologized for her behavior and for being disrespectful to SSA staff.

Mother missed some visits due to her health issues. Mother told the social worker she was unable to attend the next court hearing because of a doctor's appointment. She asked the social worker to inform the court.

Mother was in court prior to the November 20, 2017, hearing but she left before the hearing was called. Mother's counsel requested a continuance, which the court denied. The court granted Mother's request to bifurcate disposition from jurisdiction. The court found the allegations in the petition true and set the disposition hearing for November 27, 2017.

The disposition hearing was held on November 28, 2017. Mother did not attend. Mother appeared the previous day when the hearing was trailed. Mother's counsel said she received a text message from Mother saying her car had been impounded and she could not make it to court. Mother's counsel requested a continuance but said she could not assure the court that if it granted a brief continuance Mother would appear. The court denied the request for a continuance. The court found by clear and convincing evidence that placement outside the home was necessary.

III. Six-Month Review Period

Mother continued to have six hours of monitored visitation a week. She was frequently late to visits and sometimes ended them early. Mother brought snacks, toys, and activities to the visits. The children enjoyed seeing their mother.

In December 2017 and January 2018 Mother missed several visits. The social worker met with Mother at the end of January to let her know the visitation referral had been cancelled due to her missing visits. The social worker submitted a new referral for visitation, but there was a waiting period.

SSA's May 2018 status review report recommended the court terminate Mother's reunification services. Mother was not participating in her case plan services. She did not attend an intake session for her individual counseling and the referral was terminated. Mother refused to attend parenting classes because the group setting gave her

anxiety. Mother was not seeing a psychiatrist, as required by her case plan, and was not taking psychotropic medication. The social worker referred Mother to an in-home parenting coach, but there was at least a one-month waiting list. Mother reported difficulty with morning visits because her medications made her sleepy. She did not like visiting her children at SSA's offices with "cops and shitty toys." She did not want to attend visits unless they were at the visitation center or in the community. Mother was not in compliance with her drug testing program. She tested positive for methamphetamine and amphetamine in March 2018, and also failed to drug test.

SSA's June 2018 addendum report noted Mother told the social worker she was not wearing the drug patch because she knew she would test positive for marijuana and for taking medication in excess of the prescriptions she was given. The assigned parenting coach informed Mother that she would not receive a certificate of completion for her in-home parenting class because she missed two classes. Mother said she was going to stop doing everything because it did not make a difference. Mother missed three visits in May and June 2018. Mother brought food, arts and crafts, extra clothes, and other items to keep the children entertained during her visits.

SSA's final addendum report for the reunification period submitted in August 2018, noted Mother failed to attend multiple appointments for psychiatric care. Mother participated in in-home parental coaching. Mother's therapist noted Mother was compliant in therapy but expressed a lot of anger about her involvement in the system as well as a lack of trust of people in general. Mother's third no-show for therapy resulted in another reinstated referral for therapy. Mother was not drug testing and had not had a drug patch applied since April 2018. Mother's visitation was going well.

The six-month review hearing was held on August 6, 2018. Mother was not present. The court terminated Mother's reunification services and set a section .26 hearing.

IV. Mother's Petition for Modification and .26 Hearing

In early December 2018, SSA filed a section 366.26 permanency report. SSA recommended the court terminate parental rights and find the children adoptable. Mother continued to visit inconsistently, although her visits with the children were “generally appropriate.” The report noted that in October 2018, Mother misplaced her cell phone during a visit with the children. Mother asked D.A. where her phone was and said “if you don’t find my fucking phone you are not getting anything for your birthday. You are getting nothing. You better find my phone [D.A.]” D.A. began to cry. Ultimately Mother found the phone in her purse. D.A. continued to cry and the visit was ended early.

The caregivers continued to express their desire to adopt the children. Mother and the caregivers were working on developing a post-adoption contact agreement. The caregivers and Mother agreed this would be beneficial to the children. When asked about adoption, D.A. said she missed her mother and she wanted to return to Mother’s care, but if she could not she would want to be adopted by her caregivers.

In late December 2018, SSA filed an addendum report to the .26 hearing report. The report detailed an incident in November 2018, where a caregiver told the social worker H.S. (who was toilet trained) urinated on the floor in her room twice, and D.A. defecated in a “bucket that we keep their clean clothes in” after a visit with Mother. When asked to clean up the feces D.A. “smeared it all over the other clothes,” refused to clean it up, and denied she had defecated on the clothes. The caregiver attributed this behavior to the visit with Mother. According to the caregiver, D.A. said Mother told her the children would be coming home soon. Mother said she told the children they would be able to visit her at her home, and she did not realize that was confusing to them.

At a hearing on December 20, 2018, SSA asked the court to suspend Mother’s visits with the children. Mother was not present at the hearing. The court

suspended Mother's visits pending the .26 hearing. It trailed the hearing to January 11, 2019, which was later continued to January 25, 2019.

SSA filed an interim review report ahead of the .26 hearing. D.A.'s therapist said she could not give an opinion as to whether or not visitation with Mother was in D.A.'s best interest. D.A. rarely brought up Mother during their sessions. She did not like to discuss Mother. The therapist anticipated D.A.'s behaviors would worsen if Mother's parental rights were terminated.

Mother filed a section 388 petition for modification on January 25, 2019. Mother asked the court to provide her with family reunification services, or order a temporary release of the children to Mother, or order the children released to Mother under a plan of family maintenance. Mother argued it was in the children's best interests to grant Mother's request because Mother completed her services and could provide the children with a safe and stable home. The children lived with her for most of their lives and were bonded to her. Mother completed a parenting program and a family support program. She began seeing a psychiatrist in August 2018. She was placed on psychotropic medications and these were adjusted over the course of several months, and was now feeling better. She was able to function and she was productive. The medication made a difference in her depression and anxiety. Mother stated she was working as a housecleaner but she was searching for a better paying, stable job with the assistance of her Mercy House case manager. In support of her petition, Mother provided a certificate of completion from her empowered parenting class, a certificate of completion from her family support program, a certificate of completion from her in-home coach program, and releases of information for those programs.

The trial court heard Mother's section 388 petition and the .26 hearing at a combined hearing on January 25, 2019. Mother said she missed visits because she did not have transportation. She had to take three buses to get to the visits and she sometimes arrived after the girls had already left. Mother said she did not receive much help with

transportation from SSA after her reunification services were terminated. Mother stated she moved to a different city and did not have contact with the same people. She stated she had a new support system through the family resource center in her new location. Mother also testified she was seeing a psychiatrist and was taking medications to control her anxiety and depression.

Mother did not believe she played a part in the removal of the children from her care. She stated she was in the “wrong place, wrong time. I’m a victim. I got shot. I wasn’t asking for it. I didn’t look for it.” Mother said she could not complete her reunification services because she spent three months in a wheelchair and then had to use a cane.

The trial court noted Mother received life-threatening injuries and recognized recovery was a physical and psychological process. The court noted Mother presented “a gross misapprehension” of why the children were before the court. The court acknowledged Mother had recently begun to show positive change, but stated there was a great deal of work that remained. Ultimately, the court denied Mother’s petition for modification. Mother did not meet her burden of establishing changed circumstances, or that the requested relief was in the best interests of the children.

The trial court continued to the section .26 hearing. Mother argued SSA did not meet its burden of demonstrating adoptability by clear and convincing evidence. In support of her argument, Mother noted the children are special needs children with significant issues. Mother stated D.A.’s therapist suspects her behavior will worsen if Mother’s parental rights are terminated. Mother further argued there was no evidence the caregivers have a proper understanding of the children’s needs.

The trial court disagreed with Mother. One of the caregivers has a master’s degree in education and the other was a licensed vocational nurse. They were not naïve about the children’s conditions and had cared for them for at least 19 months. The court found the children specifically adoptable.

Mother asked the trial court to apply the parental bond exception to adoption. Mother believed she maintained regular visitation and the children were bonded to her. The court noted D.A.'s concern for her Mother's safety, and stated this was not an appropriate role for a nine year old. Ultimately, it found Mother did not establish a relationship of such a nature as to outweigh the children's best interests and the benefits to be derived through permanency. The court terminated Mother's parental rights and established adoption as the children's permanent plan.

DISCUSSION

Mother claims the trial court erred by denying her section 388 modification petition. Specifically, she contends she demonstrated that once she recovered from her injuries she was capable of completing her services and would provide a safe and stable home for the children. We agree with the trial court's recognition of Mother's recovery efforts. Unfortunately, her efforts were too limited and too late to justify granting her section 388 petition. We find no error.

Section 388, subdivision (a)(1), allows a parent to petition the juvenile court to change or set aside a prior order "upon grounds of change of circumstance or new evidence." The parent bears the burden of showing both a change in circumstances and that it is in the children's best interests to modify the existing order. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) We apply the abuse of discretion standard of review when reviewing the juvenile court's denial of a section 388 petition. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) We have no authority to substitute our judgment for that of the trial court where two or more inferences can reasonably be deduced from the facts. (*Ibid.*)

I. *Change in Circumstances*

We first note "there are no services that will prevent reabuse by a parent who refuses to acknowledge the abuse in the first place." (*In re A.M.* (2013) 217 Cal. App. 4th 1067, 1077-1078.) Mother consistently denied playing a part in the

children's removal. Indeed, she believed reunification services were terminated because she "didn't jump on it real quick and roll [her] wheelchair to the services [SSA] offered." Mother simply stated she was in the wrong place at the wrong time when she was shot. She disclaimed any responsibility for the underlying neglect, exposure to domestic violence, her unresolved drug abuse problems, and prior dependency histories.

Additionally, Mother's inability to adhere to her service plan during the reunification period extended past the aftermath of the shooting incident and was not merely attributable to transportation issues. She refused to participate in multiple services and failed to secure prompt psychiatric services. Perhaps most troubling, Mother failed to make significant progress on her substance abuse problems. Mother presented no evidence she had completed a drug program or otherwise remained sober. Initially, Mother tested positive for cocaine, amphetamines, opiates, and marijuana. She failed all of her drug tests before falling out of compliance.

Even considering Mother's late progress with parenting, psychiatric services, and life and employment skills, we cannot say the court abused its discretion by denying Mother's petition. In contrast to the evidence of some progress on Mother's part, she continued to deny her responsibility for the children's dependency and presented only her own self-serving testimony she had excised negative influences from her life. With these facts, the court was not bound to determine Mother presented new evidence of a change in circumstances with regard to the domestic abuse problems. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592 [evidence of improvement by mental health services provider insufficient for prima facie showing of modification.].) The trial court did not abuse its discretion by determining Mother's late claims of progress were insufficient to demonstrate a change of circumstances.

II. *Best Interests of the Children*

"It is true a parent and a child share a fundamental interest in reuniting up to the point at which reunification efforts cease. [Citation.] However, the interests of the

parent and the child have diverged by the point of a .26 hearing to select and implement a child's permanent plan. [Citation.] '[C]hildren have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' [Citation.] Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker. [Citation.] [¶] Consequently, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability. [Citation.] 'A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.' [Citation.]" (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

At this late stage of the proceedings, we look to the children's best interests, including their need for permanency and stability. As discussed above, Mother only recently began to address her own mental health care, as well as life and parenting skills. Notwithstanding Mother's recent improvements in those areas, she failed to demonstrate any progress addressing her substance abuse problem. Mother expressed her bond with the children and her desire to reunify with them. However, the children have been out of Mother's custody for more than 19 months and have lived in the home of the caregivers during that time, where they have been well cared for. The caregivers expressed their willingness and desire to adopt the children if parental rights are terminated.

"At this point in the proceedings, on the eve of the selection and implementation hearing, the children's interest in stability was the court's foremost concern, outweighing any interest mother may have in reunification. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.) The children's best interests are not to

further delay permanency and stability in favor of rewarding Mother for her partial progress and efforts to reunify. We find no error.

DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.